

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

CUNA MUTUAL GROUP, CUNA MUTUAL
FIELD SERVICES, INC.

Employer

and

Case 21-RC-20094

OFFICE & PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 39,
AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, as amended, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer is engaged in the business of selling personal lines insurance policies to credit union members. Petitioner petitioned for a unit consisting of all member service assistants, customer service representatives and sales employees employed by the Employer at its facility located at 2350 South Garey Avenue in Pomona, California; excluding all other employees,

including executives, confidential employees, managers, and supervisors as defined in the Act.

At the time of the hearing, the proposed unit numbered five employees in the various job classifications described above. These employees all work out of the Employer's Individual Property and Casualty Department (herein called the IP&C unit) at the Pomona location. All of the employees perform telemarketing functions; none of the employees engage in any face-to-face contact with customers.

The Employer contends that the petition should be dismissed, arguing that it will cease operations in the IP&C unit by November 30, 1999. Petitioner contends that the date for cessation of operations for the IP&C unit is uncertain; hence, an election should be directed. Petitioner does not dispute the Employer's claim that the IP&C unit will cease to exist.

In December 1997, the Employer entered into an agreement with Liberty Mutual to become an exclusive agent for Liberty Mutual insurance products. Prior to December 1997, the Employer, through its IP&C unit, sold and serviced various insurance policies on behalf of approximately 20 insurance carriers. The agreement provided that the telemarketing work previously performed by the employees in the IP&C unit be transferred to Liberty Mutual at a facility to be established somewhere in the Detroit, Michigan area. The agreement further provided that the Employer terminate all existing contracts it had with other insurance carriers.

By memorandum dated March 13, 1998, the employees in the IP&C unit were notified of the above agreement between the Employer and Liberty Mutual.

In June 1998, the Employer began planning for the shutdown of the IP&C unit. Such plans included notifying existing insurance carriers that their contracts with the Employer would be terminated, contacting all of the Employer's customers for the purposes of transferring their existing policies to Liberty Mutual, as well as creating a time schedule for the gradual termination of all of the employees in the IP&C unit.

In July 1998, the Employer began terminating its contracts with other insurance carriers. Without contracts, the employees in the IP&C unit

could not sell any new policies or service existing policies. The only work left for them to perform was contacting existing customers with regard to transferring their policies to Liberty Mutual, which they began undertaking in October 1998 as policies came up for renewal.

By memorandum dated December 3, 1998, the Employer informed all of the employees that the transfer of the IP&C unit's telemarketing operations to Liberty Mutual would be completed by the end of 1999.

As of January 1, 1999, there were seven regular employees and one temporary employee in the IP&C unit. The temporary employee voluntarily quit her employment some time ago. The Employer terminated one employee on April 19, 1999, and a second employee on June 30, 1999. By separate letters dated June 1, 1999, the Employer informed two other employees that their positions would be eliminated as of July 30, 1999. The Employer has indicated that notices for the remaining three employees will be sent out on or about October 1, 1999; these notices will serve to inform the employees that their positions will be eliminated as of November 30, 1999, at which time the IP&C unit will be officially shut down.

The Board has held that "to warrant an immediate election where there is definite evidence of an expanding or contracting unit, the present work complement must be substantial and representative of the ultimate complement as projected both as to the number of employees and the number and kinds of job classifications." Douglas Motors Corp., 128 NLRB 307, 308 (1960). A mere reduction in the number of employees is not sufficient to warrant dismissal of the petition. Rather, the Board will examine whether the reduction is the result of fundamental change in the nature of the employer's operations. Id. See also Canterbury of Puerto Rico, Inc., 225 NLRB 309 (1976).

The record evidence discloses that as of November 30, 1999, the number of employees in the IP&C unit will have been reduced from five at the time of the hearing, to zero. It has already been determined that two of the five employees will be terminated at the end of July 1999, both employees having already received their notices of termination on June 1, 1999.

It is evident that the contraction of the workforce is the result of fundamental changes in the nature of the Employer's operations within the IP&C unit. The employees in the IP&C unit no longer solicit new policies or service existing policies on behalf of a multitude of insurance carriers; rather, the employees' job duties since October 1998 have been limited to contacting all existing customers who have not switched their policies to Liberty Mutual, and convincing them to do so. As there became fewer and fewer remaining customers to contact, there has been less work for the employees, resulting in their eventual terminations.

Based on the above-noted considerations and the record as a whole, I find that the operations of the IP&C unit have been winding down toward shutdown by November 30, 1999, and that, consequently, no useful purpose will be served by conducting an election herein. M.B. Kahn Construction Co., Inc., 210 NLRB 1050 (1974).

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.¹

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 13, 1999.

¹ At the hearing, the parties were unable to reach an agreement concerning the Employer's correct legal name. Through the testimony presented at the hearing, a number of different entities, among them CM Field Services, Inc., CUNA Mutual Group, CMIA of Wisconsin, and CMIA of California were identified as either bearing the Employer's correct legal name or being affiliated with the Employer in some unidentified fashion. Inasmuch as the petition is dismissed, I find it unnecessary to determine the Employer's correct legal name.

Dated at Los Angeles, California, this 30th day of July, 1999.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

347-8020-6000